

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:21-CV-00029-KDB-DCK**

DUANE L. BERRY,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
TREASURY,**

Defendant.

ORDER

THIS MATTER is before the Court following its March 19, 2021 Order. (Doc. No. 5).

The *pro se* Plaintiff filed this action against the United States Department of Treasury on February 16, 2021 but failed to pay the required filing fee or file an application to proceed without prepayment of fees. He was cautioned by the Clerk of Court by Notice of Deficiency and again by this Court in its March 19, 2021 Order that failure to do so would result in the dismissal of his action.¹ Plaintiff has failed to pay the filing fee or file an application to proceed without prepaying the fee and the time to do so has expired. As such, the Court will dismiss this matter.

Moreover, this Court must also dismiss this action for lack of jurisdiction. Plaintiff initiated an identical action in the United States District Court for the Northern District of Texas. Case No. 3:21cv393. In a written recommendation that was adopted by a district court judge, the Northern District of Texas dismissed the matter for lack of jurisdiction because Plaintiff lacked standing to

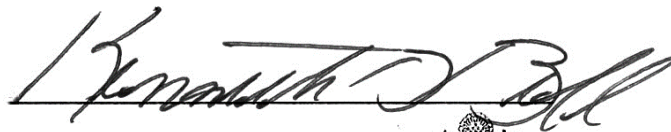
¹ Plaintiff filed an appeal of this Court's March 19, 2021 Order that is currently pending before the Fourth Circuit. However, because the March Order was a non-appealable order, this Court was not divested of jurisdiction upon the filing of Plaintiff's notice of appeal. *Ruby v. Sec'y of U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (en banc); see also *United States v. Jones*, 367 F. App'x 482, 484 (4th Cir. 2010) ("[T]he district court does not lose jurisdiction when the litigant takes an appeal from an unappealable order.").

bring the suit. In both the Texas case and this case, Plaintiff attempts to bring a civil forfeiture action in the name of the United States Department of the Treasury, identifying himself as a “Federal Trustee.” As described more fully in the Northern District of Texas’s order, it is clear that Plaintiff is not authorized to proceed on behalf of the United States Department of the Treasury and lacks standing to bring this suit. The Court has attached the Northern District of Texas’s order and adopts its reasoning as an additional basis for dismissal of this case.

IT IS THEREFORE ORDERED that this matter is **DISMISSED** without prejudice for (1) failure to pay a filing fee or file the appropriate application to proceed without prepayment of fees and (2) for lack of jurisdiction.

SO ORDERED.

Signed: April 8, 2021

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

